

REVISED FINAL STATEMENT OF REASONS:

This action amends and adopts provisions governing Article 9, Joint Venture Program within the California Department of Corrections and Rehabilitation (Department). This action clarifies the requirements of Proposition 139 (Prison Inmate Labor Initiative of 1990) and Penal Code 2717.1, *et seq.* Additionally, this action complies with a Court of Appeal opinion, *Vasquez v. State of California*, 105 Cal.App.4th 849 (2003), as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No. GIC-740832, regarding the monitoring of the Joint Venture Program's comparable wage requirement.

Regulations also comply with the Joint Submission on Regulations filed with the Superior Court, County of San Diego, dated May 26, 2005. The issues were agreed upon by the parties and the Plaintiff proposed the agreed changes during the Public Comment Period via written comments, and the Department amended the language and issued a 15-Day Renotice pursuant to Government Code 11346.8(c), and has responded to the comments and language changes in this document.

The Department shall obtain from Joint Venture Program Employers job descriptions for all inmate jobs and wage plans for all jobs. The Department will inform all Joint Venture Employers (JVE) of their obligation to meet all applicable California Labor Code and Industrial Welfare Commission Wage Order requirements relative to record-keeping and payroll data; to compensate inmate-employees at the comparable wage rate pursuant to Penal Code Section 2717.8 and Proposition 139; and to inform all participating inmate-employees of their appeal rights and of non-retaliation by the Department and the Joint Venture Employer for the exercise of such rights.

These regulations describe exceptions to the regular departmental appeal process and have been adopted to ensure that inmate-employees are aware of their rights pertaining to grievances regarding a wage and hour or retaliation claim against a JVE.

These regulatory changes are necessary to document long-standing policy for the Joint Venture Program. Changes have been made for enhanced clarity, including reference, grammatical corrections, and changes in punctuation are also made to meet departmental standards. In addition, non-substantive changes were made due to the recent reorganization of the CDCR. These are pursuant to Senate Bill 737, and codified in statute.

Subsections 3084.1 (a) through (b) are unchanged.

Subsection 3084.1(c) is amended to include the name change from the Board of Prison Terms to the Board of Parole Hearings, due to the reorganization of the California Department of Corrections (and Rehabilitation). The Joint Venture Program is included to ensure the appeal process is followed and that inmate-employees of the JVP understand their right to appeal.

Subsections 3084.1 (d) through (e) are unchanged.

Subsections 3084.7(a) through (l) are unchanged.

Subsection 3084.7(m) is adopted to include language regarding the Joint Venture Program Employer Grievance procedures. The language is necessary to specify the grievance process any current or former JVP inmate-employee may follow, the time frames for filing grievance and the resolution of an inmate's grievance if dissatisfied.

Section 3480 is adopted to establish the operations within state prison facilities known as the Joint Venture Program (JVP). This is pursuant to the Prison Inmate Labor Initiative of 1990. This section describes the JVP purpose, its function, and further establishes its intent to benefit inmates, the state and society at large. This is necessary to provide a clear understanding of the JVP. In addition, non-substantive changes were made due to the recent reorganization of the CDCR. The word director is deleted and the word secretary has been adopted. This is pursuant to Senate Bill 737, and codified in statute.

Section 3480.1 is amended and relocated from Section 3480. This action is necessary to acknowledge the establishment of the Department's Joint Venture Policy Advisory Board per Penal Code Section 2717.4. Additionally, this section identifies the Secretary of the Department of Corrections and Rehabilitation as the chairperson of the board. In addition, non-substantive changes were made due to the recent reorganization of the CDCR. The word director is deleted and the word secretary has been adopted. This is pursuant to Senate Bill 737, and codified in statute.

Subsection 3481(a) is amended to include non-substantive changes that were made due to the recent reorganization of the CDCR. The word director is deleted and the word secretary has been adopted. This is pursuant to Senate Bill 737, and codified in statute.

Subsections 3481(a)(1) through 3481(a)(4) are unchanged.

Subsection 3481(a)(5) is amended for grammatical corrections, nonsubstantive change.

Subsections 3481(a)(6) and 3481(a)(7) are unchanged.

Subsection 3481(b) is amended is amended to include non-substantive changes that were made due to the recent reorganization of the CDCR. The word director is deleted and the word secretary has been adopted. This is pursuant to Senate Bill 737, and codified in statute.

Subsection 3481(c) is amended for grammatical correctness with regard to the use of "effect" versus "affect." In addition, this subsection is amended to include non-substantive changes that were made due to the recent reorganization of the CDCR. The word director is deleted and the word secretary has been adopted. This is pursuant to Senate Bill 737, and codified in statute.

Subsection 3481(d) is adopted to state that the Director shall review and consider the financial status and stability of each Joint Venture Program business prior to entering into a binding contract agreement with the Joint Venture Employer. This is necessary to

ensure the Department that the prospective business is viable and a financially stable operation, as well as to meet the intent and goals of the Prison Inmate Labor Initiative, Proposition 139. In addition, this subsection is amended to include non-substantive changes that were made due to the recent reorganization of the CDCR. The word director is deleted and the word secretary has been adopted. This is pursuant to Senate Bill 737, and codified in statute.

Subsection 3482(a) is unchanged.

Subsection 3482(a)(1) is adopted to require a Joint Venture Employer to provide a detailed description of the program operations and the type of business or product the business will produce while in contract agreement with the Department. This is necessary to ensure that all parties to the contract are aware of the business/product requirements of the Joint Venture Employer.

Subsection 3482(a)(2) is renumbered from subsection 3482(a)(1) for numerical order. Additionally, the acronym “JVE” is spelled out, Joint Venture Employer.

Subsection 3482(a)(3) is renumbered from subsection 3482(a)(2) for numerical order and amended to include text regarding the training of non-inmate employees relative to safety and security when operating on prison grounds. This is necessary to ensure that all non-inmate employees who work in the secured area are aware of the safety and security policies and procedures of the Department and the institution.

Subsection 3482(a)(4) is renumbered from subsection 3482(a)(3) for numerical order and amended to include language in Department contracts with Joint Venture Employers that defines comparable wage and states that the Joint Venture Employer shall compensate inmate-employees at comparable wage rates. This compensation requirement is necessary to comply with Penal Code 2717.8 and Proposition 139.

Subsection 3482(a)(5) is renumbered from subsection 3482(a)(4) for numerical order and amended to require a provision in Department contracts with Joint Venture Employers that the Department will monitor the comparable wage rates of inmate-employees. This is necessary in order to ensure compliance with Penal Code 2717.8 and Proposition 139.

Subsection 3482(a)(6) is adopted to include language in Department contracts with Joint Venture Employers that requires the Joint Venture Employer to identify inmate-employees’ work schedules and hours. This is necessary to inform the inmate-employee of his or her work schedule, and to inform institutional staff of hours of operation.

Subsection 3482(a)(7) is adopted to include language in a Joint Venture Program contract that requires the Joint Venture Employer to list the minimum and maximum number of inmate-employees required by each Joint Venture Employer. This is necessary in order that the institution can ensure inmate availability providing the Joint Venture Employer with adequate numbers of employees, and to ensure that there is sufficient security coverage for the work site.

Subsection 3482(a)(8) is renumbered from subsection 3482(a)(5) for numerical order, text unchanged.

Subsection 3482(a)(9) is renumbered from subsection 3482(a)(6) for numerical order, text unchanged.

Subsection 3482(a)(10) is renumbered from subsection 3482(a)(7) for numerical order, text unchanged.

Subsection 3482(a)(11) is renumbered from subsection 3482(a)(8) for numerical order, text unchanged.

Subsection 3482(a)(12) is renumbered from subsection 3482(a)(9) for numerical order. Additionally, the acronym “JVE” is spelled out, Joint Venture Employer.

Subsection 3482(a)(12)(A) is renumbered from subsection 3482(a)(9)(A) for numerical order and text is amended to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer’s obligation to pay inmate-employees comparable wages. This is necessary to ensure compliance with the Prison Inmate Labor Initiative of 1990 and Penal Code 2717.8.

Subsection 3482(a)(12)(B) is renumbered from subsection 3482(a)(9)(B) for numerical order and text is amended to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer’s obligation to comply with applicable California Labor Code provisions and Industrial Welfare Commission Wage Orders regarding record-keeping. This is necessary to ensure that Joint Venture Employers are aware of these operational requirements of a Joint Venture Program in contract agreement with the Department.

Subsection 3482(a)(12)(C) is renumbered from 3482(a)(9)(C) for numerical order and text is amended to require Department contracts with Joint Venture Employers to identify the exact type of insurance required of a Joint Venture Employer. This is necessary to ensure the Joint Venture Employer’s awareness of the insurance requirements for operating a Joint Venture Program while on prison grounds.

Subsections 3482(a)(12)(D) and (E) are renumbered from 3482(a)(9)(D) and (E) for numerical order, text unchanged.

Subsection 3482(a)(12)(F) is renumbered from 3482(a)(9)(F) and text is amended to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer’s obligation to adhere to all laws and regulations regarding health and safety while operating a Joint Venture Program on prison grounds. This is necessary to address the obligation of each Joint Venture Employer to be aware of and apply all laws and regulations regarding health and safety relative to their type of business operation while operating a Joint Venture Program on prison grounds.

Subsection 3482(a)(12)(G) is renumbered from 3482(a)(9)(G) for numerical order, text unchanged.

Subsection 3482(a)(12)(H) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's responsibility to notify all inmate-employees of their employee rights pursuant to Penal Code 2717.8 and relevant Labor Code provisions while employed in a Joint Venture Program. This is necessary to ensure that inmate-employees are informed of their rights.

Subsection 3482(a)(12)(I) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's responsibility to comply with the Department's inmate-employee appeal processes and relevant Labor Code provisions. This is necessary to ensure Joint Venture Employer compliance with the inmate-employee's grievance procedures.

Subsection 3482(a)(12)(J) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to post a security bond. This is necessary to inform the prospective Joint Venture Employer that a security bond is required for each Joint Venture Program that operates on prison grounds. The amount of the bond shall be not less than two months wages for the workforce contemplated by the JVE after six months of operation and shall be determined on a case-by-case basis based upon, but not limited to, the size of the inmate workforce and the size of space leased by the JVE. This security bond shall be applied first to pay past due wages to inmate-employees and thereafter the bond shall be available to pay unpaid obligations to pay outstanding debts, including but limited to rent, utilities, workers' compensation premiums, and custody costs.

Subsection 3482(a)(12)(K) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to provide the Department with a complete description of each job performed by inmate-employees. This is necessary so that Joint Venture Employers are informed of the requirement of the submission of detailed job descriptions for any and all inmate jobs. This Section also informs the Joint Venture Employer that they must submit updated job descriptions to the Department on an annual basis and include duty statements with a description of tasks to be performed, machines used, and skills required for each job.

Subsection 3482(a)(12)(L) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to provide the Department a wage plan detailing the comparable wage rate for each position and providing the Department with an annual update to this wage plan. This is necessary so that the Joint Venture Employer is aware of the wage plan requirements.

Subsection 3482(a)(12)(M) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to hire inmate-employees and identify their role as the sole hiring authority of each inmate-employee. This is necessary to clarify that the Joint Venture Employer is the sole hiring authority and employer of each inmate-employee, not the Department.

Subsection 3482(a)(12)(N) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to document the

hours worked by inmate-employees in a joint venture assignment. In addition to Joint Venture Employer payroll data, all Joint Venture Employers must complete Department time sheets. This is necessary to document inmates' work credits in the calculation of their sentences and for the monitoring of inmate employment.

Subsection 3482(a)(12)(O) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to cover all inmate-employees with workers' compensation insurance. This is necessary to inform the Joint Venture Employer that they will be billed by the Department for their share of worker's compensation for all inmate-employees at the rate established for each job class.

Subsection 3482(a)(12)(P) is adopted to require Department contracts with Joint Venture Employers to specify that each Joint Venture Employer must agree that their business on prison grounds shall in no way cause the displacement of non-inmate employees in the private sector who perform the same type of work outside of prison grounds. This is necessary to comply with Proposition 139 and Federal Guidelines.

Subsection 3482(a)(12)(Q) is adopted to require Department contracts with Joint Venture Employers to outline the process to be used for the selection of inmate-employees. This is necessary to inform institution staff, the Joint Venture Employer, and prospective inmate-employees of the process and requirements of participation in the Joint Venture Program.

Subsection 3482(a)(12)(R) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation as the employer to comply with all applicable Federal, State, and local laws and regulations while operating a Joint Venture Program on prison grounds. This is necessary to inform the Joint Venture Employer that the Director of Corrections expects Joint Venture Employer compliance with all applicable rules, regulations, and laws.

Subsection 3482(a)(12)(S) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to conduct a regularly scheduled evaluation of each inmate-employee's work performance while employed in a joint venture assignment. This is necessary to inform inmate-employees that the Joint Venture Employer will complete a performance evaluation of their work productivity and to inform Joint Venture Employers of their obligation to do so.

Subsection 3482(a)(12)(T) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to post employee rights' notices in locations accessible to all employees at a joint venture worksite. This is necessary to make available all applicable employee rights notices to all inmate-employees assigned to a Joint Venture Program.

Subsection 3482(a)(12)(U) is adopted to require Department contracts with Joint Venture Employers to specify the Joint Venture Employer's obligation to establish and maintain required payroll data on each inmate-employee employed in a joint venture work assignment. This is necessary so that Joint Venture Employers are aware of their

obligation to comply with all applicable laws and regulations regarding record keeping and the maintenance of employee payroll records.

Subsection 3482(a)(13) is renumbered from 3482(a)(10) for numerical order and amended to include the word “facility” when referring to the responsibilities of departmental facilities that are involved in a Joint Venture Program. This is necessary to inform Department staff and Joint Venture Program staff that these two words can be used interchangeably.

Subsection 3482(a)(13)(A) is renumbered from 3482(a)(10)(A) for numerical order and is amended to require Department contracts with Joint Venture Employers to specify the Department/facility’s obligation to identify and designate a facility coordinator with Joint Venture Program operational responsibility. This is necessary to ensure that each prison that activates a Joint Venture Program designates a “coordinator” to oversee the Joint Venture Program operations at that prison.

Subsection 3482(a)(13)(B) is renumbered from 3482(a)(10)(B) for numerical order, text unchanged.

Subsection 3482(a)(13)(C) is renumbered from 3482(a)(10)(C) for numerical order and amended to require Department contracts with Joint Venture Employers to specify the right of departmental staff to enter and search the areas leased by the JVE. This is necessary for custody staff to account for all inmates assigned to the prison, and to ensure the safety and security of prison staff and inmates, and for departmental staff to monitor JVE compliance with Prop 139.

Subsection 3482(a)(13)(D) is adopted to require Department contracts with Joint Venture Employers to specify the Department/facility’s responsibility for the discipline of inmate-employees. This is necessary to inform the facility and the Joint Venture Employer that disciplinary problems of an inmate-employee will be handled through the prison inmate disciplinary process.

Subsection 3482(a)(13)(E) is adopted to require Department contracts with Joint Venture Employers to specify the Department/facility’s responsibility to evaluate each Joint Venture Program after the completion of the project. This is necessary for the Department to evaluate and determine the success and value of each Joint Venture Program in relationship to the goals of Proposition 139.

Subsection 3482(a)(13)(F) is adopted to require Department contracts with Joint Venture Employers to specify the Department/facility’s responsibility to conduct an initial screening of potential inmates who could be assigned to a Joint Venture Program assignment. This is necessary to ensure the safety and security of the prison and the Joint Venture Program worksite.

Existing subsection 3482(a)(11)(A) through (G) is deleted and has been included in language in subsection (a)(12) through (13) above.

Subsection 3482(b) is amended for grammatical correctness with regard to the use of “that” versus “which” and to reference PC 2717.6 regarding the restriction against replacing striking non-inmate employees with inmate-employees. This is necessary to inform Joint Venture Employers that inmate labor will not be used to substitute for striking local employees.

Subsection 3482(c) is adopted to inform all parties that the term “Joint Venture” Program is a colloquial name of the program and does not connote or create a partnership between parties as a matter of law. This is necessary in order to clarify the legal relationship between Joint Venture Employers and the Department under Proposition 139.

Subsection 3482(d) is adopted to inform inmate-employees and Joint Venture Employers that participation in the Joint Venture Program does not establish the Department as the employer. This is necessary to clarify the role of the Joint Venture Employer as the employer of all inmate-employees and as the party responsible for compliance with all applicable Federal, State, and local laws and regulations relative to the Joint Venture Employer business under Proposition 139.

Section 3483 is renumbered and text relocated to the new section 3485.

Section 3483, Joint Venture Lease, is a new section that lists the basic items required for a joint venture lease agreement with a Joint Venture Employer and the State, through the Department of General Services with the approval of the Department.

Subsection 3483(a)(1) through 3483(a)(7) is adopted to identify the required elements of a joint venture lease in addition to standard State leasing requirements. This is necessary to notify the Joint Venture Employer and Department of the items required for inclusion in all leases.

Section 3484 is adopted to specify the requirement of the Department to monitor wage rates and wage plans for Joint Venture Employers. It also informs Joint Venture Employers that the Department shall obtain from the Employment Development Department wage range data for each job description. This is necessary so that all Joint Venture Employers are informed of the Department’s responsibility of monitoring inmate wages under Proposition 139.

Section 3485 is the renumbered and relocated text of existing section 3483, Inmate Joint Venture Program Participation.

Subsection 3485(a) is adopted to notify inmate-employees that their employment is at the discretion (“at will”) of the Joint Venture Employer. The JVE may lawfully terminate an inmate-employee from participation in the Joint Venture Program at any time, with or without cause, but not for unlawful reasons. This regulation is necessary to ensure that the inmate-employee is fully aware that participation in a Joint Venture Program assignment can be ended at any time by the Joint Venture Employer or the Department.

Subsection 3485(b) is adopted to inform all inmate-employees that a random urine test can be conducted at any time as a condition of joint venture employment. This is necessary to ensure that all inmates and staff are aware of the Department's pursuit of a drug-free work place and prison.

Subsection 3485(c) is adopted to inform inmate-employees that earned wages will be paid by the JVE once a month and be distributed by the Department. This regulation is necessary to ensure inmate-employees are aware that payroll payments will occur once a month.

Subsection 3485(d) is renumbered from subsection 3483(a) for numerical correctness and amended to include the requirement that all inmate-employees' participation in the program is voluntary. All inmates must sign the Inmate Participation Agreement – Joint Venture Program (JVP) CDCR Form 1872, (Rev. 09/05) that outlines the required conditions of participation of an inmate-employee hired in a joint venture assignment. This form is necessary to document inmate-employees' agreement to the program requirements and to comply with Federal Guidelines. The Inmate Participation Agreement – Joint Venture Program (JVP) CDCR Form 1872, (Rev. 09/05) is intended to be consistent with the regulations as they were proposed and discussed with Plaintiff's Counsel. The form contains language that is identified and referenced in the Stipulated Agreement between Plaintiff's Counsel and the Department. The requirement to use the form and the contents of the form were noticed as part of the initial regulation and was made available for public review and comment during the 45-Day Comment Period and during the 15-Day Re-notice Comment Period.

Subsection 3485(d)(1) is renumbered from subsection 3483(a)(1) for numerical correctness and amended to include the word "comparable" wages. This regulation is necessary to ensure the Joint Venture Employers provide written information to inmate-employees regarding their working hours and comparable wage for their job position.

Subsection 3485(d)(2) is renumbered from subsection 3483(a)(2) for numerical correctness, text unchanged.

Subsection 3485(d)(3) is renumbered from subsection 3483(a)(3) for numerical correctness, and current text is deleted, and new text adopted to require Joint Venture Employers to inform inmate-employees of their right to report grievances of working conditions and wages under Penal Code 2717.8, relevant provisions of the Labor Code and applicable Industrial Welfare Commission Wage Orders. This is necessary to ensure that an inmate is aware of appeal rights.

Subsection 3485(d)(4) is renumbered from subsection 3483(a)(4) for numerical correctness, the current text is deleted, and new text is adopted to acknowledge the Department's "no retaliation" policy. This is necessary to inform Joint Venture Employers of the policy, and to require Joint Venture Employers to inform inmate-employees that they shall not be subject to retaliation by either the JVE or the department, for exercising their rights guaranteed under the State Labor Code or elsewhere in law to file an appeal.

Subsection 3485(e) is adopted to require all Joint Venture Employers to post all employment laws and Labor Code notices applicable to Joint Venture Program inmate-employees in work site locations accessible to inmate-employees. This is necessary to ensure that inmate-employees are aware of workplace restrictions, privileges, and employment rights while employed in a Joint Venture Program assignment.

Subsection 3485(f) is renumbered from subsection 3483(b) for numerical correctness. Additionally, the acronyms “JVE” and “JVP” are spelled out, Joint Venture Employer and Joint Venture Program. In addition, this subsection is amended to include non-substantive changes that were made due to the recent reorganization of the CDCR. The word director is deleted and the word secretary has been adopted. This is pursuant to Senate Bill 737, and codified in statute.

Subsection 3485(g) is renumbered from subsection 3483(c) and amended to spell out the acronym “JVE”, Joint Venture Employer.

Subsection 3485(g)(1) is renumbered from subsection 3483(c)(1) for numerical correctness. Additionally, the acronyms “JVE” and “JVP” are spelled out, Joint Venture Employer and Joint Venture Program.

Subsection 3485(g)(2) is renumbered from subsection 3483(c)(2) and amended to include language regarding the facility’s procedure to process the termination or removal of an inmate-employee. Inmate-employees must be immediately removed from the work site and scheduled for classification committee review. This is necessary to ensure not only prison safety, but to prevent the Joint Venture Employer from paying wages for terminated or removed inmates. Additionally, the acronym “JVP” is spelled out, Joint Venture Program.

Subsection 3485(h) is renumbered from subsection 3483(d) and amended to include the word “percent” and delete the “%” symbol. This action is necessary to identify the maximum percentage amount that can be deducted from an inmate’s gross wages pursuant to Federal Guidelines.

Subsection 3485(h)(1) is renumbered from subsection 3483(d)(1) and amended to reflect a nonsubstantive punctuation correction.

Subsection 3485(h)(2) is renumbered from subsection 3483(d)(2) and amended to identify the percentage of money that will be collected from net wages after taxes for restitution fines or crime victim funds. This is necessary to inform an inmate-employee that a percentage of their wages will be used to pay restitution fines or contribute to a crime victims' fund.

Subsection 3485(h)(3) is renumbered from subsection 3483(d)(3) and amended to clarify in words “twenty percent”, the percentage that will be deducted for room and board from an inmate’s net wages after taxes, and that these deductions will be remitted to the Department. This is necessary to inform an inmate-employee that 20 percent of his or her net wages after taxes will be deducted for room and board.

Subsection 3485(h)(4) is renumbered from subsection 3483(d)(4) and amended to clarify in words “twenty percent” the amount that will be deducted from an inmate’s net wages after taxes for family support pursuant to a court order or an inmate’s request. Inmate-employees are also informed that family support is voluntary lacking the presence of any state statute or court order to the contrary. In such a case, the family support deduction may be placed in an inmate-employee’s mandatory savings account. This is necessary to inform inmate-employees of their options regarding this deduction.

Subsection 3485(i) is renumbered from subsection 3483(e) and amended to reflect the renumbering of a referenced section, and to include the word “percent” and to delete the “%” symbol. This action is necessary to reduce confusion regarding the 20 percent deduction from net wages after taxes that shall be retained under the Department’s control in a mandatory savings account for the inmate-employee until released on parole.

Subsection 3485(i)(1) is renumbered from subsection 3483(e)(1) for numerical correctness, text unchanged.

Subsection 3485(i)(2) is adopted to inform inmate-employees and facility staff that savings account balances of \$300 or less may be closed by an inmate-employee and transferred to the inmate’s trust account when employment is terminated in a Joint Venture Program assignment. This is necessary to inform the inmate of the savings account options.

Subsection 3485(i)(3) is renumbered from subsection 3483(e)(2) for numerical correctness. Additionally, the word “Wardens” has been changed to “Institution heads” to be consistent throughout the Title 15.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

PUBLIC HEARING COMMENTS:

Public Hearing was held on June 15, 2005 at 9:00 a.m.

No one commented at the Public Hearing.

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS:

COMMENTS #1:

Comment A: Commenter contends that the proposed rule change regarding inmate employment being “at will” and that the “employer may terminate inmate-employees at any time with or without cause” is inconsistent with other regulations. Commenter contends that the ability to terminate and remove a prisoner from a JVP without cause who has a right to appeal any action or decision wholly negates any right to appeal and does not meet the consistency standard and should not be approved.

Accommodation: Partial accommodation with the amendment of text regarding the addition of the wording with respect to section 3485(a) “Employer may lawfully terminate inmate-employees ... but not for unlawful reasons.”

Response A: Department contends that the Commenter is vague in stating that the regulations are “inconsistent with other regulations.” The Department contends that these regulations are consistent with the Department’s treatment of inmates with regards to their job/employment assignments. Additionally, the initial regulations were amended and a 15-Day Renotice was mailed on June 30, 2005. The text of the regulation was amended specifically to clarify that the termination of a JVP inmate-employee cannot be for unlawful reasons. Section 3084.1 provides any inmate under the Department’s jurisdiction the right to appeal any departmental decision, action, condition, or policy, which they can demonstrate as having an adverse effect upon their welfare.

Comment B: Commenter contends that in subdivision (c)(3) and (4) inmates have rights to file complaints and appeals and furthermore, inmates have rights guaranteed under the State Labor Code to file complaints and use the inmate appeal process. Commenter contends that CCR 3084.1 gives any inmate the right to appeal.

Accommodation: None.

Response B: Department contends that the Commenter comments on 3485(c)(3) and (4), however, the text of the regulations is 3485(d)(3) and (4). Furthermore, the Department contends that the Commenter is correct in that Section 3084.1 ensures the inmate the right to appeal.

Comment C: Commenter contends that Government Code Section 3485 does not comport with the consistency standard for proposed regulations codified in GC 11349(d) and 11349.1(a)(4) because it conflicts with GC 3485 (c)(3) and (4) and CCR 3084.1(a).

Accommodation: None.

Response C: Department contends that the Commenter references Government Codes 3485 and 3485(c)(3) and (4). The Department contends that there is no such Government Code and must assume that the Commenter is referring to the California Code of Regulations, Title 15, Sections 3485 and 3485(c)(3) and (4). The Department contends that the Section 3485 does comport with the consistency standard pursuant to the Administrative Procedure Act. Sections 3485 and 3485(c)(3) and (4) have components regarding the inmate appeal process, likewise Section 3084.1 details an inmates' right to appeal under the jurisdiction of the Department.

COMMENTS #2:

Comment A: Commenter states that they are plaintiff's counsel in a case pending in the Los Angeles Superior Court (Vasquez v. State of California, No. GIC 740832). (The case is actually in San Diego County; however, for the purpose of summarizing the comments, the Department will quote the Commenter's exact words.) Commenter states that the Department is under an injunction in this case, imposed by the Honorable William C. Pate, which pertains to the Joint Venture Program. The Commenter states that the counsel for the Department has conferred and agreed not to oppose certain requested modifications in the Proposed Directors Rules. Commenter states that on June 9th the Court concluded that a second group of proposed regulations violates the Injunction and although counsel for the Department opposes this position in connection with the second group of regulations, we urge you to modify the Proposed Directors Rules so the new rules are in conformity with the Injunction.

Accommodation: Department submitted a 15-Day Renotice with changes to the initially proposed regulations.

Response A: Department contends that a 15-Day Renotice, pursuant to Government Code Section 11346.8(c), was mailed to Commenters and interested parties on June 30, 2005. This 15-Day Renotice contains amendments to the initially proposed regulations specific to the "group of proposed regulations alleged to violate the Injunction." The proposed regulations were modified and the specific modifications are addressed in the following responses to the Commenter's written Public Comments.

Comment B: Commenter states that the following specific modifications to the proposed regulations would be acceptable to counsel for the Department. In

Section 3485(a) the proposed provision provides that an employer may terminate inmate employees “at any time with or without cause.” The Commenter contends that an employer has no right to improperly terminate a worker. Accordingly, the words “but not for unlawful reasons” should follow the sentence “the Joint Venture employer may terminate inmate-employees at any time with or without cause.” The word “complete” should be removed from the first sentence regarding the discretion of the employer, and the word “lawfully” should precede the word “terminate.”

Accommodation: Commenters written public comments were accepted and text was modified. A 15-Day Renote with the requested amendments was issued on June 30, 2005 and will be included in the Final Rulemaking File.

Response B: Department contends that the text of the initially proposed regulations were amended in the 15-Day Renote to include the word “lawfully” in the second sentence of Section 3485(a) preceding the word “terminate” and to include the specific language “but not for unlawful reasons” following the sentence “the Joint Venture employer may terminate inmate-employees at any time with or without cause.” The Department contends that this amendment is in keeping with the Court Injunction and is consistent with the Agreed Solution in the Joint Submission re the regulations filed with the Court on May 26, 2005, that both the Commenter and the Department agreed upon.

Comment C: Commenter contends that in Section 3485(c) the employer has an obligation to pay inmates twice a month under the Labor Code. The Department, however, can distribute such wages once a month. So that this provision is not misinterpreted to provide license to the employers, Commenters propose that it reads, “Earned wages paid by Joint Venture Employers will be distributed to inmates once a month, regardless of the frequency the employer issues payroll.”

Accommodation: Commenters written public comments comments were accepted and text was modified. A 15-Day Renote with the requested amendments was issued on June 30, 2005 and will be included in the Final Rulemaking File.

Response C: Department contends that the text of the initially proposed regulations were amended in the 15-Day Renote to include the specific underlined language “Earned wages paid by the Joint Venture Employer will be distributed to inmates by the department once a month, regardless of the frequency the employer issues payroll.” In the Agreed Solution in the Joint Submission re the regulations filed with the Court on May 26, 2005, both the Commenter and the Department agree that the Labor Code does not apply in the relationship between the inmate and the State, and that the State has the right to distribute monies to the inmate on a monthly basis. The employer has an obligation under the Labor Code to pay wages in the relevant time periods, which the Department requires.

Comment D: Commenter contends that in Section 3482(a)(13)(C) the regulation provides a right of entry and searches in “production areas.” Commenter contends that this is too limited and that the Department and other interested parties must have the right to go to office areas to review documents, including payroll records and time cards, if needed, to ensure compliance with Proposition 139 and the California Labor Code. Commenters proposes that the words “production areas,” be changed to “area leased by the Joint Venture Employer,” and a statement that all areas of the JVE are subject to search and inspection.

Accommodation: Commenter’s written public comments were accepted in part and text was modified. A 15-Day Renotice with the requested amendments was issued on June 30, 2005 and will be included in the Final Rulemaking File.

Response D: Department contends that the text of the initially proposed regulations were amended in the 15-Day Renotice to delete the specific language “production areas,” and amend it to include the specific underlined language “area leased by the Joint Venture Employer.” The Department contends that this amendment is in keeping with the Court Injunction and is consistent with the Agreed Solution in the Joint Submission re the regulations filed with the Court on May 26, 2005, that both the Commenter and the Department agreed upon. The Department also contends that the Commenter requested that the statement “all areas of the JVE are subject to search and inspection” be added to the text. This was not agreed upon in the Joint Submission and the Department contends that adopting this language would be redundant as the agreed upon changes include the ability for the Department to search and inspect all JVE areas.

Comment E: Commenter contends that although the proposed duty statements contain the word “detailed,” they do not include information specifically required by the Injunction. The Commenter requests that the regulations provide the following language: “Duty statements shall include a description of tasks to be performed, machines used, and skills required for each job. The wage plan must show the plan scheduled of wages for each job description and the number of employees in each job.”

Accommodation: Commenters written public comments were accepted in part and text was modified. A 15-Day Renotice with the requested amendments was issued on June 30, 2005 and will be included in the Final Rulemaking File.

Response E: Department contends that the text of the initially proposed regulations were amended in the 15-Day Renotice to include in Section 3482(a)(12)(K) the underlined amended text: “Duty statements shall include a description of tasks to be performed, machines used, and skills required for each job.” The Department contends that the duty statements already include such details, and required, as part of the regulations, “detailed” duty statements. The Department contends that this amendment is in keeping with the Court Injunction and is consistent with the Agreed Solution in the Joint Submission re the regulations filed with the Court on

May 26, 2005, that both the Commenter and the Department agreed upon. Additionally, the Commenter added the sentence, “the wage plan must show the plan scheduled of wages for each job description and the number of employees in each job.” The Department contends that the statement is ambiguous and would create confusion regarding the requirements between the duty statement in Section 3482(a)(12)(K) and a wage plan dealt with in Section 3482(a)(12)(L). Additionally, it was not agreed upon in the Joint Submission and it is unnecessary because the wage plan is addressed in Section 3482(a)(12)(L).

Comment F: Commenter states that on June 9, 2005, the Court ruled that the wording prepared by the State in the proposed regulations violates the Injunction. Specifically Section 3482(a)(12)(R) states that it is the sole responsibility of the employer to comply with all applicable federal, state and local laws. The Commenter believes this is incorrect and gives the wrong impression to employers. In addition to the Joint Venture Employers, the State is responsible for ensuring compliance with all federal, state, and local laws and regulations. Commenter contends that the Court of Appeal decision action has made this clear. Commenter suggest the following language: “The Joint Venture Employer must comply with all applicable federal, state and local laws and regulations.”

Accommodation: None.

Response F: Department contends that Section 3482(12)(R) deals with a provision to be inserted in each contract with a Joint Venture Employer to clarify any possible confusion that the Department is the employer of any of the inmates, that the employment relationship is between the inmate and the employer, and that the employer is responsible for payment of wages, etc. This provision does not derogate from or undermine the State’s obligation to monitor compliance with the comparable wage requirements (which are covered elsewhere in the regulations; see e.g. Section 3482(a)(5). The Department contends that the removal of the word “sole” may create the impression (on the part of the employer) that it can somehow transfer its obligation under the law onto another party, including the Department or the State. In addition, the prefatory statement to Section 3482(a)(12) makes it clear that it refers to the “Responsibilities of the Joint Venture Employer.” References to obligations/responsibilities of other parties are not appropriate in that context.

Comment G: Commenter contends that Section 3482(a)(12)(J) provides that a security bond of not less than two months wages be required for each Joint Venture Employer. Commenter states that the bond may be used by the Department for either payroll or defaults on any other obligation to the State, such as rent, utilities, workers compensation, and other costs. Commenter states that the Injunction provides that the bond must be retained for the duration of the contract and, “in the event that the bond is called by the Department, the funds shall be used first to pay past due wages...In the event of any surplus, such a surplus may

be used to pay amounts due to the State.” Commenter states that on June 9, 2005, the Court concluded that the proposed regulations did not comply with the Injunction. Commenter contends that it is their position that the requirement to pay wages is contained in the Labor Code and also in Proposition 139 (Penal Code Section 2717.8). Commenter states that compliance with State law should take priority over, for example, rent obligations, which are contractual obligations. Commenter contends that other agencies are adversely affected by an underpayment of wages. Commenter states that these are the agencies which receive payments from wage deductions, such as the Victims Fund, the Restitution Fund and the Department itself, which are each to be given twenty percent of the wages. The Commenter implies that he will be applying for an extension of the Injunction past the end date of February 2006. The Commenter contends that the bond should be used to pay wages. They contend that if the State desires a bond to ensure against the risk of a Joint Venture Employer’s default on contradicted obligations, the regulations can provide for a separate bond. The Commenter contends that this should be the situation even after the Injunction is over, given the importance of complying with State law in this regard and since the inmate workers would be otherwise uncompensated, in violation of state and federal minimum wage laws.

Accommodation: Commenters written public comments were accepted and text was modified. A 15-Day Renote with the amendments was issued on June 30, 2005 and will be included in the Final Rulemaking File.

Response G: Department contends that the text of the initially proposed regulations were amended in the 15-Day Renote to include the following language: “The department shall apply the bond first to pay past due wages to inmate-employees and thereafter be available to pay unpaid obligations to the State, including, but not limited to, rent, utilities, workers’ compensation, and custody costs.” The Department contends that this language ensures compliance with the Court Injunction. The Department contends that once these regulations are in place and filed with the Secretary of State, it is obligated to follow its own regulations and procedures.

Comment H: Commenter contends that Section 3484(a) and (b) provides that the Department shall monitor the wage rates and wage plans submitted by the Joint Venture Employer for compliance with PC 2717.8, and the Employment Development Department shall provide wage data for each inmate employee job description. Commenter states that on June 9, 2005, the Court held that this proposed regulation did not comply with the Injunction. Commenter contends that it is their position that far more than this section provides is required of the Department in terms of enforcing compliance with Proposition 139. Commenter states that according to the terms of the section, the Department is required only to “monitor” wage rates and wage plans from its Joint Venture partners and receive wage data from the EDD. Commenter contends that the injunction, however, does not require monitoring alone. It requires the Department to ensure

compliance with the comparable wage requirements of Proposition 139. Commenter contends that this section should provide that the Department establish, or at the very least ensure, that all wage rates for any inmate job description comply with the comparable wage requirements of Proposition 139 and that it will take affirmative steps to collect any underpayment of comparable wages as required by Proposition 139. Commenter contends that to ensure that changing State personnel assigned to the Joint Venture Program understand their obligations, the wage rates for each employee position, should be set and approved by the State for compliance with Proposition 139 before the inmate worker begins their job. Commenter contends that this section should provide that the State may conduct unannounced site visits, interview inmate employees, consult with competitors, and review time and payroll records to ensure compliance with Proposition 139 and the Labor Code, so there is no misunderstanding on the part of the employers. Additionally, the Commenter contends that obtaining EDD data, of itself, is not adequate. The Commenter contends that the Standard Occupational Classification (SOC) data for each of the positions should be obtained. Commenter contends that this would ensure that none of the State or the Joint Venture partners will entertain the mistaken notion that the standard form response of the Employment Development Department (EDD) somehow indicates an acceptable wage range minimum.

Accommodation: None.

Response H: Department contends that Section 3484 is in compliance with the Court Injunction and addresses the issue that the Department shall monitor the wage rates and wage plans by the JVE for compliance with Penal Code Section 2717.8. Additionally, 3482(a)(4) states, “compensation of inmate-employees by the Joint Venture Employer shall be comparable to the wages paid by the Joint Venture Employer to non-inmate employees performing similar work for that employer.” The Department contends that this ensures compliance with the requirements of Proposition 139 as stated by the Court Injunction. Section 3482(a)(12)(L) provides for wage rates for each position prior to the start-up of the Joint Venture Employer’s operation. Also, the Department contends that the regulations are specific to this comment in Section 3484(b) stating that EDD shall provide wage data for each job description. The SOC data for each of the positions will be obtained from EDD and the Department will adhere to those federally required standards.

Department contends that the proposed language regarding an affirmative steps requirement on the part of the Department to collect any underpayment of comparable wages infringes upon the discretion of the Department to implement the JVP and misconstrues the import of the *Vasquez v. State of California*, 105 Cal.App.4th 849 (2003), decision.

COMMENTS #3:

Comment A: Commenter contends that the proposed regulations may apply to him because he is not a first-timer and that most of the new or restitution based facilities are or have certain restrictions and now JVP raises grave concerns for ex-cons that are subjected to being housed in prison programs and don't have a chance to work back into a community base facility and prepare to be accepted by society.

Accommodation: None.

Response A: Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 113435.9, the above comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment B: Commenter contends that the most important or in the best interest of men and women who desire to work to support some family members while incarcerated, thus employ men and women who qualify a great deal to assist the Department to define the true meaning and the availability of PILI and stop giving up on the violators who return year after year just to parole. His complaint is to insure that as Americans, we stand on our own issues – if he doesn't then he will have failed the people who helped build this country.

Accommodation: None.

Response B: Department contends that this comment must be summarized pursuant to Government Code Section 113435.9, but is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

15 DAY-RENOTICE:

Public Comment period was June 29, 2005 through July 18, 2005.

No Public Comments were received regarding the modified text in the 15-Day Renotice.